

Thursday, March 31, 2022, Albany, NY
Hon. Mae A. D'Agostino, Presiding
Clerk: Britney Norton
Steno: Jacqueline Stroffolino

UNITED STATES OF AMERICA,

vs.

1:19-cr-156 (MAD)

XIAOQING ZHENG,
Defendant.

APPEARANCES: Office of the U.S. Attorney for the NDNY by: **Richard Belliss, AUSA,**
Emily Powers, AUSA, and Matthew Chang, AUSA for the Government
with *FBI Special Agent Mary Claypool*.

Luibrand Law Firm, PLLC: **Kevin Luibrand, Esq.** for the defendant.

Akerman LLP: **Bradley Henry, Esq.** for the defendant.

JURY TRIAL DAY 18 - Thursday, March 31, 2022

8:30 a.m. Juror no. 3 will not report today.

9:00 a.m. Judge D'Agostino enters and addresses counsel regarding juror no. 3 and how to proceed with this trial.

9:03 a.m. recess

9:20 a.m. Judge D'Agostino enters

9:20 a.m. Judge D'Agostino addresses counsel regarding how to proceed.
Counsel for the Government and Counsel for the Defense consent to proceed with 11 jurors, under Rule 23 of the Federal Rules of Criminal Procedure.

9:22 a.m. Jury enters.

9:23 a.m. Judge D'Agostino instructs the jury that their deliberations will proceed with 11 jurors. The Jury is excused to continue their deliberations.

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9:24 a.m. Judge D'Agostino addresses counsel.

9:25 a.m. Recess while the jury deliberates.

9:25 a.m. The alternate juror is present and remains in a separate location while the jury of 11 continue their deliberations.

10:00 a.m. Jury Note no. 10/Court Exhibit no. 11 - jury question.

10:20 a.m. Judge D'Agostino addresses counsel regarding Jury Note no. 10/Court Exhibit no. 11.

10:28 a.m. recess.

10:35 a.m. Judge D'Agostino enters and addresses counsel.

10:37 a.m. Jury enters.

10:37 a.m. Judge D'Agostino addresses the jury regarding Jury Note no. 10/Court Exhibit no. 11.
Judge D'Agostino questions the foreperson.
The rest of the jurors verbally respond as well.

10:39 a.m. Jury excused to deliberation room.

10:42 a.m. Jury Note no. 11/Court Exhibit no. 12 - the jury has reached their verdict.

10:56 a.m. Judge D'Agostino enters and addresses jury note no. 11 with counsel.

10:57 a.m. Jury enters

10:58 a.m. Judge D'Agostino addresses the jury.

10:59 a.m. The verdict is reported by the foreperson -
- Defendant Guilty on Count 1.
- Not Guilty on Counts 7, 8, 9, 10
- Hung as to Counts 2, 3, 4, 5, 6, 13, and 14

11:05 a.m. The jury is polled.

11:06 a.m. The jury is excused with the thanks of the Court.

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- 11:07 a.m. Parties advised of motion and appeal deadlines.
- 11:09 a.m. The Court declares a mistrial as to Counts 2, 3, 4, 5, 6, 13, and 14
- 11:09 a.m. Sidebar with counsel regarding forfeiture.
- 11:12 a.m. The parties stipulate that forfeiture will be addressed in post trial briefing.
The Court directs probation to prepare and submit a presentence investigation report. Sentencing is set for August 2, 2022 at 11:00 a.m. in Albany.
- 11:13 a.m. The Government moves to remand the defendant pending sentencing, or in the alternative, if he is released that he be released with electronic monitoring.
- 11:15 a.m. The Court Orders the defendant released on the conditions previously set - with the ADDED conditions of electronic monitoring and a curfew.
The defendant is directed to report for sentencing, as directed.
If imprisonment is ordered, the defendant will be remanded o the day of sentencing.
The Order directing counsel not to speak with the press is lifted.
- 11:15 a.m. Court stands adjourned.